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8vo volumes at Philadelphia. We are glad to have at last this American edition of Dr. Franklin's life and writings.

There is another collection of a similar kind which we wish to have made; and we do not know that we shall find a better opportunity for suggesting it. It is a collection of the writings of Washington. We wish to see a splendid American edition of these, as perfect as the arts can make it, published as a sort of monument to his memory. There are various likenesses of him, from which engraved portraits might be taken and inserted in such a work, together with portraits of other eminent men, with whom he was connected. It is enough to say of his writings, that they correspond to his character. They are plain, manly, energetic, and full of wisdom. His Official Letters are among the most interesting books that we have read, and afford information which can be derived from no other source. We are ignorant why the publication of them was suspended, or why it has not been resumed. If there are not objections, with which we are unacquainted, we think it most desirable that the remainder should be given to the world. Those which are yet unpublished might be included in such an edition as we have proposed; and if any publisher were to execute such an edition faithfully, as it ought to be executed, there can be little doubt that he would be amply repaid.

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ART. XV.—*Laws of the sea with reference to maritime commerce during peace and war—from the German of Frederick J. Jacobsen, advocate, Altona, 1815. By William Frick, Counsellor at Law. Baltimore; E. J. Coale, 1818. pp. 636.*

THE ancients have left us but little on the subject of commercial law; and that little has lost much of its value in modern times. It may perhaps be supposed that a great deal has perished amidst the ruins of the dark ages; or has been swallowed up in the desolations of conquest, or the overwhelming obliterations of time. Much splendid declamation has been employed in describing the maritime glory of the Phœnicians, and the Cretans, and the Rhodians, and the Egyptians, and the Greeks, and the Carthaginians, and the Romans. Without question the Mediterranean was from ear-

ly times inhabited by warlike, enterprising and industrious races of people. They had different commodities to exchange, adapted to the natural and artificial wants, the necessities and the luxuries of the different societies into which they were divided. It was of course, that ambition and enterprise, the love of wealth, and the desire of gratifying curiosity, should create an active interchange of these commodities, both by sea and land. The spirit of commerce once excited, is not easily extinguished or controlled. It is a useful spirit, which imparts life and intelligence to the body politic, increases the comforts and enjoyments of every class of people, and gradually liberalizes and expands the mind, as well as fosters the best interests of humanity. Many usages must necessarily grow up in such a state of things, where many independent nations are engaged in trade with each other; which usages, at first determined by accident or convenience, or the dictates of common sense, must gradually ripen into rights and duties, and thus regulate the concerns of commerce. It is not therefore to be supposed, that the nations, of whom we have spoken, were wholly without any principles of maritime law. But there are many reasons for believing that nothing like an enlarged and general system of that law was ever adopted by any of them.

In the first place, the business of their commerce was extremely simple; their voyages short; and their shipping adapted to small cargoes and narrow reaches. They were obliged to ply the shores, and neither their interest nor their means in the then state of navigation, allowed them to plan or execute the complicated voyages of modern times. The coasting trade of a single modern maritime power is probably far more extensive than the whole trade of many flourishing states of antiquity; at least the operations of that trade were far less complicated; and yet the coasting trade has given rise to comparatively few of the questions of modern maritime law. In the next place, most of the ancient governments, whether despotic or free, seem to have devoted themselves more to the profession of arms and the increase of their military and naval power, than the encouragement of peaceful commerce. In the despotic governments, almost every thing was left to the undefined discretion of the sovereign, who would not easily be induced to circumscribe the limits of his own authority. In the free governments, the jarring of discordant

interests, and the impatience of legislative control, manifested by the mass of the people, combined with the almost continual foreign warfare in which they were engaged, to prevent any effort to systematize their civil polity. Under such circumstances, it is not very probable that any public regulations could be framed in respect to maritime contracts, except in some few cases of extraordinary occurrence or peculiar difficulty. The Romans indeed seem to have been the only people who attempted to methodize the principles even of their municipal law. It has been remarked by Dr. Adam Smith, (*Wealth of Nations*, *b. 5, ch. 1. part 3, art. 2.*) ‘that though the laws of the twelve tables were many of them copied from those of some ancient Greek republics; yet law never seems to have grown up to be a science in any republic of ancient Greece. In Rome it became a science very early.’ Nor do we recollect that it ever has been pretended, at least in respect to maritime law, that any of the ancient nations, except the Rhodians, had formed any thing like a commercial code;—and that the extent as well as the importance of this code has been greatly overrated, we think there are very strong reasons to believe. Whatever was most valuable in that code was without doubt well known to the Romans; and so far as it suited their own more enlarged commerce, was probably transfused into their own jurisprudence. And we shall hereafter see what have been the value and extent of the obligations of the Romans to the Rhodian Laws in this particular.

As to the manuscript found in the library of Francis Pi-thou, a celebrated jurist of the sixteenth century, which was published first at Basle in 1561, by Simon Scardius, and afterwards at Frankfort in 1596, by Marquardus Freer and Leunclavius, as genuine fragments of the Rhodian Laws, it may be observed, that if their genuineness were completely established, they would not increase our veneration for the wisdom or the commercial polity of the nation, whose name they bear. But the critical sagacity of modern civilians has not hesitated to reject these fragments as more than apocryphal, as the fictions of some jurist as late at least as the middle ages. It is true that they have been silently quoted or directly asserted as genuine, by Cujas, by Selden, Godefroi, Vinnius and other eminent jurists. Bynkershoek first boldly denied their authenticity; the cautious and accom-

plished Heineccius followed in the same path ; and their opinion has been generally adopted by the learned of the eighteenth century. Rejecting, therefore, as we do, the fragments of the Rhodian Laws, as a modern fraud, there is nothing which has reached us, except the codes and the compilations of the Roman emperors, which even wears the habiliments of ancient maritime jurisprudence ; and so far are we from thinking that any thing material has been lost, that we consider the substance of all ancient maritime jurisprudence as embraced in the titles of the *Corpus juris civilis*. The circumstances, under which the Roman code was compiled, do, as we think, fully justify these remarks.

At the period when Justinian meditated the great works which have immortalized his memory—a monument of fame more desirable than all that conquest can bestow, and which seems destined to endure to the end of time—the Roman empire had passed through its brightest ages of military, civil and commercial grandeur. She had been for centuries as renowned for her jurisprudence, as for her arms. A succession of learned men had adorned her courts, as judges or as lawyers, who had left behind them their arguments, opinions and commentaries upon most of the important branches of her law. Besides these, there were the honorary law, and edicts of her prætors. the plebiscita and senatus consulta of the days of the republic, the imperial constitutions and rescripts of her emperors, the collection of the honorary law or perpetual edict of Julian, and the successive codes of Gregorius, Hermogenes and Theodosius. From these materials were composed the Institutes, the Code, and the Pandects of Justinian. So that they may be truly considered as the depository of the collected wisdom of all her sages, and as a most authentic transcript of her municipal law in its most perfect state. Nor is this all. She had successively conquered and incorporated into her domain almost all the other civilized nations of the eastern continent, including those which had been most distinguished in commerce ; and it can scarcely be doubted that whatever was excellent in their maritime police, had been from time to time adopted into her own jurisprudence by the rescripts of her emperors, or by the more salutary decisions of her courts, guided by the principles of equity, and selecting with true national comity from the usages and the learning of foreign countries. We have di-

rect evidence of this position, in the fourteenth book of the Pandects, title second, *ad Legem Rhodiam de jactu*, where, in a case of maritime law put to the emperor Antoninus, he answered ‘*Lege id Rhodiâ, quæ de rebus nauticis præscripta est, judicetur* ;’ plainly importing that the doctrines of the Rhodian Laws on this subject had been recognized and incorporated into the Roman jurisprudence. As to the manner in which they were incorporated, it is highly probable that it was not by any imperial edict, but by the gradual operation of judicial decisions, adopting them as rules founded in general convenience and fitted to the commercial transactions of Rome itself. What strengthens this supposition is, the fact that the Rhodian Laws are not to be found in the text of any of the Roman codes ; and the very title of the Pandects, where we should expect to find them, if they had been adopted in mass, contains nothing but the commentaries and opinions of Roman lawyers on the principles which regulate the application of the law of jettison and some few other nautical questions of a kindred nature. If this be a just view of the case, and we have no doubt it is, the Roman law as collected by Justinian contains in itself the substance of all the maritime law of all antiquity, improved by the philosophy and the learning of Roman jurisconsults. Yet how narrow is the compass within which the whole maritime law of Rome is compressed ! It scarcely fills a half dozen short titles in the Pandects, and about as many in the Justinianian code,\* mixed up with matter properly appertaining to other subjects.

The most interesting and important are the titles in the Pandects ; three of which treat of the responsibility of the owners and employers (*exercitores*) of ships for the safe keeping and delivery of goods shipped on freight, for the contracts of the master in respect to the employment, repairs and concerns of the ship, and for the acts and defaults of the a-

\* The principal titles in the Pandects are Lib. 4, tit. 9. *Nautæ, cautiones, stabularii, ut recepta restituant*. Lib. 14, tit. 1. *De exercitoria actione*. Lib. 14, tit. 2. *ad legem Rhodiam de jactu*. Lib. 22, tit. 2. *De nautico fœnore*. Lib. 47, tit. 5. *Furti adversus nautas, cautiones, stabularios*. Lib. 47, tit. 9. *De incendio, ruina, naufragio, rate, nave expugnata*. In the Code, Lib. 4, tit. 25. *De institoria et exercitoria actione*. Lib. 4, tit. 33. *de nautico fœnore*. Lib. 6, tit. 62. *de hæreditatibus decurionum, naviculariorum, cohortalium militum et fabricensium*. Lib. 11. *de naviculariis seu naucleris publicas species transportantibus*. Variis titulis. There are a few supplementary regulations in the Novels and Authentics of Justinian, on the subjects of maritime loans and the plunder of wrecks.

gents and mariners of the ship; one treats of bottomry and maritime loans, one of jettisons, and one of shipwrecks. Whoever expects to find, even under these heads, the minute details and practical principles of modern times, will certainly be disappointed. He will however find the elements of our own law on this subject, expressed with excellent sense, and often illustrated by apt examples;—and brief indeed as are these texts of the civil law, the whole maritime world has paid them a just and voluntary homage, by adopting them as the nucleus, around which to gather their own commercial regulations. But the very circumstance, that so little is here to be found, after Rome had been for so many ages the mistress of the world in commerce and in arms, seems a decisive proof, that neither she nor any more ancient nation in the Mediterranean had ever digested at any period a general system of maritime law.

The glory of having reduced the principles of maritime law to a science belongs to later times; but no one of competent judgment can doubt that much of its intrinsic equity, as well as comprehensive liberality, is owing to a familiarity with the Roman digest, with that beautiful distribution of civil justice, which the labours of Labeo, Capito, Proculus, Gaius, Papinianus, Paulus and Ulpianus so much contributed to perfect and adorn. The whole of our own law of contracts rests upon Roman foundations; and we daily feel how much of the enlarged equity which pervades the doctrines relative to navigation, charter-parties, liens and shipments, is deduced by a regular descent from the time of Tribonian.

Let it not therefore be imagined that the maritime law, as acknowledged and practised upon by the most enlightened nations of the present day, was produced per saltum, by the sudden start of a single mind or nation, generalizing and analyzing the principles at a single effort. Far different is the case. It arrived at its present comparative perfection by slow and cautious steps; by the gradual accumulations of distant times, and the contributions of various nations. Industry and patience first collected the scattered rays emitted from a thousand points through the dim vista of past ages, and philosophy reflected them back with tenfold brilliancy and symmetry. If indeed a professional mind might indulge in a momentary enthusiasm, it would perceive, that in this process had been realized the enchantment and won-

ders of the kaleidoscope, where broken and disjointed materials, however rude, have been shaped into inexhaustible varieties of figures, all perfect in their order and harmonies, by the adjustment of reflected light under the guidance of philosophy.

The irruptions of the northern Barbarians over the western Empire, and the introduction of the feudal system, seem for a while to have suspended the operations of commerce. But as soon as mankind began to shake off the drowsiness of the dark ages, commerce revived upon the same shores of the Mediterranean, which had long been her favourite abodes. As it extended its vivifying effect, every state became sensible of the importance of collecting its own mercantile usages into some regular system, at least for its own government. One of the earliest, if not the earliest, and considering its age, the most extraordinary collection of this kind, is the *Consolato del mare*. The question, what country is entitled to the honour of its origin, has been contested with as much warmth and zeal, as the birth-place of Homer, and the exact time of its first publication has been enveloped in the like obscurity. It has been variously assigned to a date as early as the tenth century, and as late as the fourteenth. Vinnius and Crusius appear to have thought that it was composed in the time of St. Louis, king of France. Grotius and Marquardus assign it to the age of the crusades, and assert that it was collected by order of the ancient kings of Arragon. In this latter opinion they are followed by Targa and Casaregis. Azuni, in a very elaborate essay, endeavours to establish that it is a revision of the maritime code, which existed in very early times in the republic of Pisa. On the other hand, Capmany, an eminent Spanish jurist, asserts that the compilation was first made at Barcelona; and in this opinion he is followed by Boucher, the learned editor of a late French translation. The earliest edition of the work which can be traced by the diligence of its editors, is admitted on all sides to be that published by Celedes in Barcelona in 1494. This, as Boucher informs us, is the original of all editions and translations that have subsequently appeared in the Castilian, the Italian, the Dutch, and French languages. The English language has not as yet been honoured by any translation, except of two chapters on prize law by Dr. Robinson.\*

\* The principal editions, as they are collected by the best authors, are,  
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The title of this curious collection, *Consolato del mare*, (consulate of the sea) is derived from the name *consolato*, (consulate or consular court) which was, by almost all the commercial nations of the Mediterranean, given to their maritime courts. The value of this collection has been differently estimated in modern times by learned men. Hubner, with his usual petulance has treated it as an ill chosen mass of maritime usages and positive ordinances of the middle age, or of times very little enlightened, which are now obsolete and of no authority. Bynkershoek, in his usual bold and determined manner, treats it with as little ceremony. After approving of its decision in a particular case, he adds, ‘*vellem omnia, quæ in illa farragine Legum nauticarum reperiuntur, æque proba recta essent, sed non omnia ibi sunt tam bonæ frugis.*’ To these opinions we might justly oppose the discreet yet liberal praise of Casaregis, Emerigon, Valin, Vinnius and Lubeck. But in our judgment it is not necessary to resort to the *testimonia eruditorum*. The fact that the substance of its regulations was eagerly embraced and immediately incorporated into the usages and the ordinances of all the maritime nations of the continent, pronounces an eulogy on its merits, which no formal vindication can surpass. Emerigon very justly states, that its decisions have united the suffrages of all nations, and it has furnished ample materials for the maritime ordinance of France of 1681—an ordinance, which has immortalized the ministry of Louis the 14th; and which perhaps, more than the maritime code of any other nation, deserves the praise of the philosophic jurist. Nay, more, the *Consolato del mare* contains the rudiments of the law of prize, as it is at present administered; and its authority has perhaps weighed more than any other in settling the great controversy of our own times relative to the question, whether free ships make free goods. England in asserting

the edition of 1494 by Celelles, printed at Barcelona in the Catalonian dialect; of 1502 at the same place; of 1539 by Francisco Romano at Valentia in Castilian; of 1544 by N. Pedrozano at Venice in Italian; of 1567 by Zerbetti in Italian; of 1576 by Zanetti & Co. in Italian; of 1577 by Mayssoni at Marseilles in French; of 1579 at Venice in Italian; of 1584 in Italian; of 1592 at Barcelona in Catalonian; of 1599, at Venice in Italian; of 1635 at Aix in French; of 1696 and 1720 by Casaregis in Italian; of 1704 by Westerveen in Italian and Dutch; of 1732 by Cayetano de Talleja in Castilian; of 1791 by Capmany in Castilian at Madrid; of 1808 by Boucher in French.

the negative, (as we think with vast force of reasoning,) has reposed on this venerable monument, as affording the surest proof of the antiquity and the general recognition of the rule, which she has so justly sought to establish, and which has stood approved to the good sense of the three greatest civilians of modern times, Grotius, Bynkershoek and Heineccius.

As the *Consolato del mare* is a rare work in our country, it may not perhaps be useless to give a general outline of its method and contents. The whole work, as we now find it in the edition of Casaregis, is contained in two hundred and ninety-four chapters.\* Of these the first forty-four chapters do not, properly speaking, belong to the original collection, but treat of the jurisdiction and forms of proceeding in the consular court of Valentia. The forty-fourth chapter is the proper commencement of the work, which contains, not as is often supposed, the positive institutions of any particular maritime nation promulgated by its sovereign, but a collection of the general usages and customs of the sea, as approved and practised upon in the most enlightened ages. The forty-fourth chapter, which is in fact the proem of the work, states, ‘These are the good institutions and good customs which relate to the sea, which the wise men who went abroad began to give to our ancestors, which form the book of the knowledge of good customs, in the course of which will be found the duty of the master of the ship towards the merchants, mariners, passengers and all other persons who go in the ship, and also the duty of the merchants, mariners, passengers, &c. towards the master of the ship,—for whoever pays freight for his person as well as merchandize, is denominated a passenger.’ The work then proceeds, in an order not very exact or methodical, to state the doctrines relative to the ownership, building, and equipment of ships; the authorities and duties of the master and owner; the rights and duties of the mariners; the responsibility of the masters, owners and mariners in cases of the shipment of goods, in a general ship, or under charter-parties; the earning, payment, and loss of freight and wages; and incidentally treats of ransoms, salvage, average, jettisons, and captures and recaptures.

Such is the *Consolato del mare*—the grand reservoir from

\* In the edition of Boucher, which is a translation from the original edition of Celelles, the whole number of chapters is 297.

which, as we have already intimated, have been drawn the principal ordinances of modern maritime nations. It is remarkable that the laws of Oleron and Wisbuy,—which are of so great antiquity, that they dispute precedency with the Consolato, and by many learned men are assigned to an earlier age,—contain nothing on the subject of the law of prize ; and that the Consolato stands alone as the earliest expounder of the law of nations. In neither of them, if we except a single article (art. 66.) of the laws of Wisbuy, is there the slightest allusion to the contract of insurance. There is therefore some reason to believe, either that the laws of Wisbuy, as we now have them, belong to a later date, or that the article in question is an addition to the original code.\*

The history of commercial jurisprudence since the publication of the Consolato, including therein also the law of bills of exchange and promissory notes, would be very interesting and instructive, at least to the professional reader. He would there have an opportunity to trace the numerous rivulets, which, in different ages and nations, have contributed to form the vast and perpetually increasing stream of commercial law. He would there learn the slow and almost imperceptible manner, in which its principles have, from minute origins, expanded to their present comprehensive and systematical equity. He would look back with admiration and surprise upon the patience, public spirit and scientific enthusiasm of those learned men, who devoted themselves, with such unremitted labour, to the development of those principles of moral propriety and justice, which distinguish this branch of the law. Above all, he would perhaps catch a spark from the altar, which would light him on still farther in the path of virtuous glory, and would stimulate him still more to enlarge the boundaries of the science, and vindicate to himself that immortality which Cicero was not ashamed to court, and from which even the modesty of Sir William Jones did not retire.

But we have no space or leisure for such interesting in-

\* Stypmannus, Gibalinus, Ausaldus and Casaregis suppose that the contract of insurance was introduced in the fifteenth century. Emerigon relies on this article in the laws of Wisbuy to establish the contrary.—Marshall in his *Insurance* (p. 18) doubts whether the latter part of this article, as it stands in Cleirac, be not a mere comment upon the original text ; if so, the other part of the article may well admit of an explanation foreign from any notion of insurance. Malynes omits this clause.

quiries. They belong to some philosophic spirit, who, free from the bustle and the toils of professional life, may indulge himself in juridical speculations in learned ease. Such a one may without rashness undertake the task, and encourage his heart with the consideration, *numina nulla premunt*.

It may not however be uninstrusive to review in a rapid sketch, the merits of some of the most eminent writers, who, in different ages, from the early twilight of maritime law, contributed to give the public mind that rational direction, which has made even the technical rules of that law the dictates of philosophy itself.

About the middle of the sixteenth century, Peckius, a distinguished civilian of Belgium, published an edition of the principal texts in the *Pandects* and *Code ad rem nauticam*, and enriched them with an ample commentary, in which he has brought together all the valuable remarks of preceding jurists on this subject, and explained the reasons of the principles stated in the texts. At the distance of about a century, this work was re-edited with supplementary comments by Vinnius, who, in his best manner, has added illustrations from the maritime laws of other nations, and thereby supplied the deficiencies of his master.\* Vinnius himself complains of these deficiencies; ‘*appareatque ex toto illo Peckii opere non vidisse eum ullas alias leges de rebus maritimis quam quæ in corpore juris Justiniani continentur.*’ He then very justly reproves the long digressions in which Peckius had indulged, but concludes, ‘*ostendit sane in hoc opere Peckius sibi non defuisse justam eruditionem solidamque juris et multarum rerum scientiam.*’ The work however, such as it is, with its double commentaries, is more frequently quoted than read in our own times.

About the same period, the work on averages of Quintin Weytsen, a counsellor of Holland, is supposed to have been first published. In the body of the work there is no reference to any decision posterior to 1551, soon after which time it was therefore most probably compiled; and the editor of the edition of 1651 speaks of it, as a work which

\* The works of Peckius were first collected and published together in 1646; but the edition before us was published at Antwerp in 1679. His treatise *ad rem nauticam* was first published in 1556; and republished with the commentary of Vinnius in 12mo. at Leyden in 1647. Vinnius died in 1657.

had appeared in Holland a long time before. It is certainly not without merit; and Casaregis thought so well of it, that he translated it into Latin, and put it at the beginning of the third volume of his works with the notes of Van Leeuwen and Mathieu de Vicq.

Straccha and Santerna, the first an Italian, and the last a Portuguese jurist, adorned the latter part of the sixteenth century. Their works are found collected in a large work, *De Mercatura*, which was first published at Cologne in 1623, and subsequently at Amsterdam in 1679.\* The principal tracts of Straccha are *De Mercatura*, *de Nautis*, *de Navibus*, *de Navigatione*, and *de Assecurationibus*. In the first (*de Mercatura*) he treats in separate parts of the following topics; (1.) who is a merchant and what is merchandising; (2.) of the condition of merchants, and things appertaining to that condition; (3.) of those who are prohibited from being merchants; (4.) in respect to what things (*causis*) merchandising may be; (5.) of the contracts of merchants; (6.) of mandates, or orders on commission; and (7.) of some miscellaneous questions relative to merchandise. In the second tract, (*de Nautis*) he treats generally of the rights, duties and responsibility of the masters and mariners of ships, arising from their contracts or their defaults. In the third (*de Navibus*) he treats of the ownership, building, repairing and freighting of ships, and other contracts relative to shipments. In the fourth (*de Navigatione*) he discusses some points not embraced in the preceding. In the fifth (*de Assecurationibus*) after a very elaborate preface, he introduces the form of the policy of insurance used in Ancona in 1567; and taking up the several matters, in the order of the policy, he examines every sentence by itself, and in a perpetual gloss or commentary explains the doctrines of insurance applicable to the contract. The treatise of Santerna, which is entitled *De Assecurationibus et sponsionibus mercatorum*, is on the other hand a systematic treatise upon the same subject. Both of these writers draw their doctrines from the usages of merchants, from general reasoning, and above all, from the

\* The title of the work is '*Benevenuti Stracchæ aliorumque clarissimorum jurisconsultorum de mercatura, cambiis, sponsionibus, creditoribus, fidejussoribus, debitoribus, decoctoribus, navibus, navigatione, assecurationibus, subhastionibus, aliisque mercatorum negotiis rebusque ad mercaturam pertinentibus, decisiones et tractatus varii*.'

law of contracts in the Roman code, wherever it is applicable. Considering the age in which they wrote, they are very respectable authorities ; and Valin has pronounced the eulogy of Straccha, when he declares him ‘an author truly estimable.’ (auteur vraiment estimable.)

The seventeenth century was distinguished by the labours of a great many illustrious writers on maritime law. To the beginning of that century, or to the latter part of the preceding, is to be referred the work, entitled ‘*Le Guidon utile et necessaire pour ceux qui font merchandise et qui mettent a la mer.*’ This is an ancient French Treatise on the law of insurance and bottomry, in which the various doctrines are examined in a very scientific manner, and with a practical accuracy, greatly surpassing all preceding works on the same subject. The author of the work and the exact time of its first publication are unknown. In 1647, Cleirac published a new edition of it, with an excellent commentary in his ‘*Les us et coutumes de la mer.*’ The account he gives of it is, that it was an old French work formerly drawn up for the use of the merchants of Rouen ; and he adds, ‘ce avec tant d’adresse et de subtilité tant deliée que l’auteur d’icelui en explicant les contrats ou polices d’assurance a insinué et fait entendre avec grande facilité tout ce que est des autres contrats maritimes, et tout le general du commerce naval ; de sorte qu’il n’a rien omis, si ce n’est seulement d’y mettre son nom pour en conserver la memoire et l’honneur qu’il mérite, d’avoir tant obligé sa patrie, et toutes les autres nations de l’Europe ; lesquelles peuvent trouver en son ouvrage l’accomplissement de ce qui manque, ou la correction de ce qui est mal ordonné aux reglemens, qui chacune a fait en particulier sur semblable sujet.’ This is high praise ; but Cleirac was a very competent judge. His own commentary on this work and on the laws of Oleron, establishes his reputation as a maritime jurist, in the very first rank ;\* and to his collections and commentaries Lord Mansfield was unquestionably indebted, for many of the best principles of commercial law, which he infused into the English system. It is most obvious, from his decisions, that he had studied Cleirac with extraordinary attention.† And we may add, upon the author-

\* There have been many editions of Cleirac’s work, the earliest of which is of 1647, and the latest, we believe, is the one now before us, of 1788.

† See among other cases *Jake vs. Lyde*. 2 Burr. R. 882.

ity of Valin, that Le Guidon formed a part of the immense compilation of law, from which was drawn the famous ordinance of 1681.

About the middle of the seventeenth century, appeared the works of Stypmannus, of Loccenius, of Kuricke, and of Roccus on maritime law.\* Stypmannus in his treatise, entitled '*Jus Maritimum*,' discusses in a prolix manner most of the questions of maritime law. Loccenius is more condensed and more narrow in his range. The subject of insurance is treated by him in a very slight and careless manner. In other respects, the work is quite as useful as Stypmannus. There are three treatises by Kuricke. The first (*Jus Maritimum Hanseaticum*) contains an elaborate commentary on the several articles composing the Hanseatic ordinance of 1614. The second (*Diatriba de Assecurationibus*) is a very short discussion on the law of insurance. The third (*Resolutio Questionum illustrium ad jus maritimum pertinentium*) is a collection of miscellaneous questions on maritime law, which the author is pleased to call '*illustrious questions*,' but which in our humble judgment, contain a great deal of learned trifling, and insignificant criticism. One of these '*illustrious questions*' is, whether a journey by sea is preferable to a journey by land; and another, whether a ship repaired is the same ship, which she was before the repairs were made. From this specimen, we might perhaps be induced to turn with contempt from such an author. But it was the misfortune of the age in which Stypmannus and Loccenius and Kuricke lived, that jurists employed a great deal of their time and talents in idle discussions upon unimportant topics, and buried matter of more worth and virtue under a cumbrous load of scholastic learning and metaphysical subtleties. Far different is the character of Roccus. He was an eminent jurist and judge at Naples, and published two tracts, one *de Navibus et Naulo*, the other, *de Assecurationibus*, which he modestly terms *Notabilia*, which deserve, and have received the approbation of all Europe. They consist of a series of texts,

\* Stypmannus was first published, as Valin says, at Stralsund in 1661. Westerveen in his edition of Roccus, refers to an earlier edition, printed at Gryphiswaldia in 1652. Loccenius was first published at Stockholm in 1652; Kuricke at Hamburg in 1667; and Roccus at Naples, in 1655. These works, except Roccus, were collected and published by Heineccius with a learned preface, in a single volume at Magdeburg in 1740, under the title of *Scriptorum de Jure nautico et maritimo Fasciculus*.

remarkable for their brevity, accuracy, sound exposition of maritime law, and practical utility even in our days. His learned Dutch editor, Westerveen, has justly observed of these treatises, ‘*iisque casus quotidianos tam breviter et absolute complexus est (i. e. Roccus) tam luculenter proposuit, tam dilucidè explicavit, ut omnium Scriptorum indicem seu compendium fecisse videatur.*’\* Roccus has, indeed, drawn liberally from his predecessors, and from none more frequently, or more correctly, than from Juan de Hevia Bolaños,† a most learned and excellent Spanish writer of his own age, whose works deserve to be better known. But Roccus was himself endowed with a clear and comprehensive mind, and, as his select responses shew, with a most acute and sound judgment. His works are of more practical use to an English lawyer, than all the other maritime works, if we except Cleirac, which had been previously published. Lord Mansfield is under no inconsiderable obligations to them, and can be traced in some of his most celebrated decisions back to the pages of the Neapolitan.

We have now approached the times of Bynkershoek and Casaregis, two of the most eminent civilians that ever adorned the courts of any nations. In the short review already made of maritime writers, since the days of the Consolato, we have purposely omitted to speak of those who professedly wrote on the law of prize, or the more general doctrines of the law of nations. We have the more readily done this, not because there are not very ample materials for historical and critical disquisition, but because war and conquest and national calamity have but too frequently brought them before the public. Who indeed is there, that is ignorant of the fame or the writings of Grotius and Puffendorf? Bynkershoek has immortalized himself by his treatise *de foro lega-*

\* The works of Roccus were collected and published at Naples in a large folio volume. They consist of the tracts above mentioned, and two centuries of answers to select questions. Westerveen selected the treatises and responses on maritime law, and published them in 12mo. at Amsterdam in 1708. An excellent translation has been recently published of the tracts *de navibus et naulo*, and *de asscuracione*, by Joseph R. Ingersoll, Esq. of Philadelphia.

† Mr. Duponceau, in his most valuable notes to his translation of Bynkershoek on the law of war, has spoken with becoming praise of De Hevia. The tracts referred to are those published by De Hevia on commercial contracts in his institute of the law of Spain, called *Curia Philippica*.



torum, and his *Questiones publici juris de rebus bellicis*.\* It is not perhaps as generally known, that he has written a very neat sketch of the law of bottomry, and some very excellent dissertations on the subject of commercial law, and particularly of insurance. Every thing, which came from this great man, bears the marks of an original, vigorous, and independent mind. He often expresses himself with boldness and vehemence, and sometimes also with a lofty contempt for the opinions of others. But his learning, sagacity, and sound judgment, rarely, if ever, desert him. Alluding to Adrian Verwer, a Dutch writer on Bottomry and average, he says, ‘*haec etiam adhibuit, qui ante aliquot annos hunc contractum commentariolo illustrare conatus est; sed, sat scio, manes ejus non offendam, si et ipse ex penu meo aliquid proferam; ille mercatorem egit, ego cum maxime jurisconsultum agam, et sine jurisprudentia etiam haec sacra non constant.*’ He was conscious of his own strength, and while acting the part of a jurisconsult, in expounding doctrines, he speaks in a tone which indicates the judge, from whose sentence no appeal is permitted. Of his works, it may be asserted without rashness, that the more they are studied, the more they will be admired and respected.

Casaregis was born at Genoa in 1670, and died in 1737. He was appointed a judge of the Supreme Tribunal of Tuscany; and in that office, as his biography states, he discharged the duties with great assiduity, integrity, prudence and universal approbation for more than twenty years. His works have been collected and published in four folio volumes, and consist of two hundred and twenty-six discourses on various topics of commercial law, of a Latin translation of Weytsen on averages, as already mentioned, of a new edition of the *Consolato del mare*, with an excellent explanation or commentary (*Spiegazione*) of his own, and a treatise, entitled, ‘*Il Cambista istruito*,’ upon bills of exchange and other commercial securities, and of a few tracts upon municipal law.† His commercial discourses are by far the most

\* Mr. Duponceau has prefixed to his translation of this last work a short but very satisfactory account of the life and writings of Bynkershoek. Why will not Mr Duponceau increase the public gratitude by translating the works of other learned foreigners, and by a critical account of the writings of those civilians, who are best entitled to the attention and study of American lawyers?

† The best edition of Casaregis’ works is that printed at Venice in 1740.

valuable of all his works to a modern lawyer. They embrace the whole circle of commercial law, including the law of prize, and are written in a plain, clear style, abounding in just and practical remarks and sound learning. All that is most useful in the works of former jurists is collected and commented on with acuteness and accuracy, and for the most part the topics are examined, until the whole subject matter is exhausted. Rarely have we looked into his works upon any contested question, without rising instructed and enlightened by the perusal. Higher praise cannot be bestowed upon him than the fact affords, that he is quoted by all subsequent writers on commercial law, as a leading and safe authority, and Valin does not scruple to affirm, that he is beyond all contradiction the best of all the maritime authors. In recommending him therefore, to the diligent study of our own lawyers, we are confident that we do them a substantial service, which will be estimated the more, as familiarity with his works makes his merits more extensively known.

We had almost forgotten to speak of an author, who was a countryman and contemporary of Casaregis, and is often cited by him with great respect and approbation. We allude to Targa, who in his *Reflexions on maritime contracts* (*Ponderazioni sopra la contractazione marittima*) has drawn from the civil and canon law, the *Consolato del mare*, the usages of maritime nations and preceding writers, the most useful learning on all the subjects of maritime law, except insurance, and has adapted his work to practice by collecting the forms of the various contracts, with hints for their proper application. He is generally esteemed as an industrious and correct author; but his fame seems lost in the superior blaze of his illustrious countryman.\*

France was, during the seventeenth century, behind Italy in her attention to the great interests of commerce; and her truly admirable ordinance of 1681 afforded the most ample materials for the employment of the best talents of her bar

(which is now before us) in 4 volumes folio. The two first volumes contain his *Discursus de Commercio*, in Latin, the third *Tractatus de Avariis, Cambistæ instructi*, and *Consulatus maris*, the fourth *Elucubrationes ac Resolutiones ad Statuta Januæ de Decretis ac de Successionibus ab intestato*.

\* The works of Targa are not very common in our country. A good edition was published at Genoa in 1750, and we have before us a Spanish translation, by Juan Manual Giron, printed at Madrid in 1753, in which the author is highly praised.

and bench. Of this masterly code, Mr. Marshall, in his treatise of insurance, has spoken with bare justice, when he says, ‘it forms a system of whatever experience and the wisdom of ages had pronounced to be most just and convenient in the marine institutions of the maritime states of Europe. And though it contains many new regulations, suggested by motives of national interest, yet it has hitherto been esteemed a code of great authority upon all questions of maritime jurisprudence.’ Excellent however, as this code is, it stood in need of a philosophical commentator to explain its principles, to follow them out into all their minute consequences, and to illustrate and strengthen them by the lights borrowed from the whole body of maritime jurisprudence. The middle of the eighteenth century witnessed the perfect accomplishment of this great task, after the failure of other attempts had almost extinguished every hope. Valin has the singular merit of having produced a commentary, which in celebrity has eclipsed even the text itself, and in authority stands equally high with the positive regulations of the royal ordinance.

The illustrious author published his great work in 1760, and it immediately circulated over all Europe. He has justly observed, ‘un commentaire sur l’ordonnance de la marine est un de ces projets hardis, dont le succes peut seul justifier l’entreprise. L’auteur des notes (imprimees in 1714) sur cette ordonnance, loin d’en avoir compris la difficulté, il ne l’a pas meme soupçonnée, et j’avoüé qu’elle ne m’a été bien connue, quelors qu’il n’étoit plus temps de reculer.’ Never, indeed, was success better earned, or more completely attained. The work is a perpetual commentary upon every article of the ordinance, and contains within itself the body of maritime jurisprudence expounded with a philosophical precision and depth of learning, which has rarely been equalled, and can scarcely be surpassed. It is to be lamented, that the author scarcely lived long enough after the publication to enjoy the reward of his labours.\* His fame—it may perhaps perish—but it will cast the last stream of its light upon the last ruins of time.

England had hitherto made but slow advances in commercial law. The laws of Oleron, the articles preserved in the

\* Monsieur Valin died in 1765. His works are (1.) ‘Nouveau Commentaire sur l’ordonnance de la marine,’ in 2 vols. 4to. first printed in 1760; the edition before us is 1766. (2.) *Traité des Prises*, in 2 vols. 8vo. printed in 1763. (3.) *Commentaire sur la Coutume de la Rochelle*, in 3 vols. 4to. printed in 1768.

Black book of the admiralty, and the treatises of Molloy, Malynes and Marius, formed nearly the whole stock of her written maritime jurisprudence. But the period was now arrived, when a different state of things was to be presented. The dawn of a brighter day had already diffused its pale but increasing light round her wide domain, and it burst upon us with inextinguishable glory, when Lord Mansfield ascended the bench.\* This was an epoch in English juridical history, since which the grandeur of her naval power has scarcely been more universally felt, or acknowledged, than her commercial jurisprudence has been admired and respected for its solid principles and equity. Lord Mansfield was an accomplished scholar, whom Pope has elegantly praised in lamenting,

‘How sweet an Ovid in a Murray lost.’

He was an excellent civilian, and from his Scotch education was early imbued with a reverence for the civil law. He was thoroughly versed in all the maritime literature of the day, and had studied all the best works from the *Consolato del mare* to Valin. To the latter indeed he owes deep obligations. Mr. Marshall has observed, that ‘he appears to have taken much pains to possess himself of the soundest principles of marine law, and of the law of insurance, and that he seems to have drawn much of his knowledge upon these subjects from the ordinance of Louis 14th and from the elaborate and useful commentary of Valin.’ With all these advantages he possessed liberal and enlarged views, a sagacious and penetrating spirit of inquiry, an unwearied diligence, a solid judgment, and a most persuasive flow of spontaneous and glowing eloquence. Whatever subject he touched, was touched with a master’s hand and spirit. He employed his eloquence to adorn his learning, and his learning, to give solid weight to his eloquence. He was always instructive and interesting, and rarely without producing an instantaneous conviction. He broke down the narrow barrier of the common law, against the prejudices of the age, and infused into it an attractive equity, which it seemed to all his predecessors incapable of sustaining. All Westminster Hall listened with admiration and delight to his judgments, and stood astonished at the extent and variety of his attainments; and if he ever removed from the temple of English jurispru-

\* Lord Mansfield came upon the bench on the 11th of November 1756.

dence, a single pillar of gothic structure, it was, that he might replace it with the exquisite finish of the Corinthian order, carved in Parian marble. In short, he was one of those great men raised up by Providence at a fortunate moment to effect a salutary revolution in the world. If he had never existed, we should still have been in the trammels and the quibbles of technical refinements. He has lived, and the law is redeemed from feudal selfishness and barbarity. A lofty ambition of excellence, that stirring spirit, which breathes the breath of heaven and pants for immortality, sustained his genius in its perilous course. He became, what he intended, the jurist of the commercial world, the judge for every polished nation, whose code was built upon virtue and principle. He lived to a good old age,\* and could look back upon a long track illumined with glory. But even that track is but a point compared with the splendour of his fame, as it will be seen ascending and widening by distant ages. Is it most for the honour of Valin or Lord Mansfield, that the commentary of the former has furnished the principal materials, or that the latter has wrought those materials with such exquisite skill, that they now form the most polished structure of commercial law that the world has ever beheld?

It is not a little remarkable, that while Lord Mansfield was running his splendid career, two eminent scholars on the continent were devoting themselves with equal ardour to the pursuit of commercial jurisprudence. We allude to Pothier and Emerigon, the one, the author of the most finished Treatise upon Insurance, which has yet appeared, the other, the author of distinct treatises upon almost all the branches of law of contracts, including maritime contracts, equally remarkable for their brevity, luminous method and apposite illustrations.† Whether Lord Mansfield was acquainted with the works of either of these illustrious writers is uncertain. The probability is, that he was not. Emerigon's Treatise was not published until near the close of his judicial

\* Lord Mansfield died on the 20th of March, 1793, in the 89th year of his age.

† The treatise of Emerigon, is entitled *Traité des assurances et des contrats à la Grosse*, and was first printed at Marseilles in 1783. The Treatises of Pothier were published at different times between 1761 and 1772, in which last year the author died. The best edition of his works, is that printed at Paris in 8 vols. 4to, 1781. We have not been able to find any account of Emerigon.

career; and we gather from an intimation of Sir William Jones, in his essay on bailments, that at the time of the publication of that work (in 1781) Pothier was unknown in England. 'For my own part, (says he) I am so charmed with them [i. e. Pothier's treatises] that if my undissembled fondness for the study of jurisprudence were never to produce any greater benefit to the public than barely the introduction of Pothier to the acquaintance of my countrymen, I should think that I had in some measure discharged the debt, which every man, according to Lord Coke, owes to his profession.' If, however, Emerigon and Pothier were unknown to Lord Mansfield, they have since his time instructed both the lawyers and the judges of Westminster Hall. But there is yet wanting a judge of the generalizing genius and enterprise of Lord Mansfield, or the classical enthusiasm of Sir William Jones, to naturalize them in that forum. To the honour of America, there is one man, once a chief justice, and now a chancellor, (need we name him?) whose acknowledged learning has taught us how much judicial judgments may be enriched by the manly sense of Pothier, and the acute investigation of Emerigon.

We had intended to say something more in relation to the merits of these authors, and to have sketched a critical analysis of their works. But we are admonished, that we have already exhausted more time than we can properly devote to such speculations. We quit them with regret; but there are younger and abler pens that can do them justice; and we trust that it is no idle dream to anticipate, that the next age of the law will find our accomplished lawyers consulting the continental jurists with the same familiarity, with which we now cite Blackstone and Marshall.

The work which stands at the head of these remarks, and from a review of which we have been so long detained, is, as the title page purports, a translation from the German. We have not seen the original, and therefore cannot speak of the exactness of the translation. But we have no reason to doubt its accuracy. Mr. Frick appears to be perfectly competent to his task, both in learning and diligence, and so far as he has permitted himself to appear in the notes, he has acquitted himself in a manner very creditable to his talents and his acquirements. We should, indeed, have been better pleased if the notes had been more extensive, and had em-

braced the various commercial decisions, and particularly the prize decisions, which have been recently made in the United States on the various topics discussed in the text of Mr. Jacobsen. We have no right however to complain of this omission; and when a gentleman offers a really valuable present to the profession, it seems hardly justice or civility to insist that he ought to have made it still more valuable. Mr. Frick will please therefore to accept our thanks for the book, such as it is, and if, as we hope, it should be favourably received by the public, and a new edition be called for, we think our hint will not be unworthy of his consideration; and from the ability of the present specimen, we are sure that he will command the public confidence in his enlarged annotations.

We will now proceed to give some account of the work itself. We learn from the preface, that Mr. Jacobsen is himself a lawyer, and that 'whatever practical jurists among the Italians, French, English, Dutch, Danes and Germans have written and suggested upon the subject applicable to these times; whatever is contained in the sea laws yet in force on the subject; whatever was to be gathered from numerous legal decisions [in England]; whatever was to be gained by a correspondence for year's with men who have made the subject of maritime law the study of their lives; whatever in sixteen years professional experience in maritime affairs, has suggested itself to the author as useful or desirable, he here proffers as a part of the debt which every one owes to the country of his birth and to mankind in general.' And he adds, 'How inconsiderable as yet is our proficiency in the science of maritime law compared to our treatises of municipal law. The present, perhaps, is the first attempt to offer any thing in a systematic form relative to ships' papers, on which depend the fortune and the peace of so many families; for the ships' papers, with reference to the maritime laws of war, have hitherto never been treated of in any language.'

Prefixed to each chapter is a catalogue of the authorities and editions of the several authors who have discussed the subject matter of that chapter, and from whose writings the doctrines have been drawn; and to the whole work is prefixed a catalogue of the authors who have treated of the subject generally, or of the literature connected with it, with

short comments upon their merits. This we think is a very useful addition ; and in this catalogue, we notice a number of works which have never reached us through any English publication. It is some consolation, however, that as far as the contents of these works are disclosed to us, they do not contain any very considerable accession to the learning already within our reach, and Mr. Jacobsen has incorporated whatever seemed most useful into his own treatise. What struck us with some degree of surprise on the first examination, was the heavy contributions which Mr. Jacobsen had levied from the English authorities. He appears perfectly familiar with the recent decisions in the courts of Westminster Hall, and the commercial treatises of Abbott, Lawes, Park and Marshall ; and has manifestly adopted their doctrines, from a thorough conviction of their soundness and equity. This is a flattering distinction ; and is repaying to continental Europe the obligations, which England, in the earliest stages of her law, owed to the enterprize and wisdom of the civilians. As to the law of prize, it is almost entirely borrowed from the reports of the decisions of the High Court of Admiralty, since the time of Sir William Scott. For this, the author himself offers a very striking reason. ‘If,’ says he, ‘in the subsequent part of his work, he (the author) has confined himself somewhat more exclusively to the doctrines and opinions of that celebrated man, whose unrivalled decisions on maritime law, like the judgments and opinions of the Roman jurists in the civil law, will constitute an essential part of maritime law for centuries to come,—it was because the continental jurisprudence is barren of examples in those branches of the subject. As the commercial law of Great Britain received much of its perfection through the decisions of Lord Mansfield, so the maritime laws of war of that country have attained their maturity, through the decisions of Sir William Scott.’ This acknowledgement is extremely honourable to English jurisprudence ; but it is also honourable to our author, who shews in this as in other parts of his work, that he is far removed from the prejudices of his continental contemporaries, and that he breathes the genuine spirit of an universal jurist. It is no small praise that he is so far above the visionary doctrines of Hubner and Schlegel and the French and German theorists. Nor is this the least valuable portion of the work to an English lawyer. It is a remarkable



fact, that no systematic treatise upon the law of prize has as yet appeared in England. The very superficial, hasty, and imperfect sketch of Mr. Chitty, does not deserve the title, which it bears, and has been egregiously overrated. Our own country has been honoured with a treatise on captures by Mr. Wheaton, which is in every respect far superiour to Mr. Chitty's, and, taken in connexion with his extensive notes on prize law in his reports, it approaches very near to a complete body of this important branch of law. Are not the merits of our own authors, and especially of our own juridical authors, very slowly appreciated? In what respect is Mr. Livermore's learned treatise on the law of principal and agent, inferior to those recently sent from the English bar?

What, however, constitutes the principal value of Mr. Jacobsen's work to an American lawyer, is the minute accuracy and fulness, with which it gives us the positive and customary law of all the maritime nations of the continent. And this, in our judgment, is a most interesting and, in a practical view, a most important accession to our juridical literature. Of the maritime law of Russia, Prussia, Denmark, Sweden and Germany, we have hitherto known very little. Yet with all of them we carry on an extensive trade; and the principles of their jurisprudence as to maritime affairs, both in peace and in war, are of incalculable importance to our merchants—nay more, to our government. This is not all;—a great variety of curious and difficult questions are perpetually arising in our judicial tribunals, where the positive regulations or usages of other commercial nations would greatly assist us in forming decisions, which should comport with general convenience, as well as with the general principles of law. Many are the cases, in which the reasoning is so nicely balanced on each side, that a settled foreign usage ought to incline the scale. We owe indeed a full moiety of our present commercial law, to the positive ordinances or usages of France, Italy and Spain, as they have been delivered to us by their eminent jurists. They seem now inclined to borrow from us in return; and thus, perhaps, national comity may gradually establish a nearly uniform system of commercial jurisprudence, throughout the whole civilized world.

We have no hesitation, therefore, to recommend Mr. Jacobsen's treatise to the favourable attention of our lawyers

and merchants. They cannot fail to be greatly instructed by the perusal. The learned author has prepared his work from very ample materials, and with the most laborious diligence, and in general with sound discrimination and impartiality. If Mr. Abbott's treatise were not in existence, Mr. Jacobsen's would be indispensable for every lawyer's library. As it is, it will reflect great light on points where Mr. Abbott is deficient or unsatisfactory; and no gentleman ought to consider himself thoroughly read, who has not mastered its learning.

We had intended to insert a few extracts from the work, that our readers might be able to judge for themselves of its method and execution; but, on running over the chapters, we found it difficult to make any extract, which would exhibit a fair specimen, without occupying more room than our pages would allow. And, in a professional treatise, this is the less necessary, as a just opinion of its merits can rarely be formed without a perusal of the whole.

We notice in the translation some Germanisms, which it was not perhaps easy, without an awkward circumlocution or paraphrase, to avoid. There are also some words, which have not yet acquired a legitimate use in our language, such as 'endorstation' and 'bottomried.' There may be some reason to adopt the latter word, though innovations are dangerous; but there can be no such apology for the former, since we have a genuine English word (endorsement) of the same signification. There are also some errors of the press; one, (in p. 556) which is important to the sense, and where the words should be 'the shadow of partiality' in lieu of 'the shadow of impartiality.' These, however, are but specks, which we have no inclination to magnify; and Mr. Frick can have no reason to wish to have concealed.



ART. XVI.—*Theology; explained and defended, in a series of sermons; by Timothy Dwight, S. T. D. L. L. D. late president of Yale College. With a Memoir of the Life of the Author.* Middletown, Con.; Clark & Lyman; 1818. 5 vols. vol. i. 8vo.

As this volume is the commencement only of a large work, we shall confine our remarks chiefly to the life and literary character of the author, reserving for a future opportunity our examination of his 'Series of Sermons.'